

4. Mr. Mohite, learned Advocate for the

applicant has submitted that the case would not fall under Section 302 of IPC, but, it would fall under Section 304(II) of IPC. He has submitted that only one blow was given by the applicant to Firoz and that blow was given during the course of sudden quarrel. Mr.Mohite has submitted that looking to these facts, the case would not fall under Section 302 of IPC.

5. Smt.Kejariwal learned APP for the State has submitted that there are two eye witnesses to the incident, i.e. P.W.2 Anwar and P.W.3 Tanvir. She has submitted that these two eye witnesses have clearly implicated the applicant.

. In reply to this submission, Mr.Mohite learned Advocate for the applicant has pointed out that the evidence of P.W.2 Anwar, involving the applicant, is by way of improvement. He has drawn out attention to Para 4 of the evidence of P.W.2 Anwar, wherein this witness has stated as under,

" I had stated before Police that Kasam had assaulted Firoz. If this

statement is not appearing in my statement of 22nd, I cannot tell reason for it."

. Thus, from this statement of P.W.2 Anwar in his evidence, it does appear that the present applicant has been implicated by way of an improvement.

6. As far as P.W.3 is concerned Mr.Mohite has pointed out that in his examination-in-chief, P.W.3 has stated that he knows all the accused before the Court as they are residents of Hanuman Tekadi. However, this witness in his cross-examination has admitted as under,

" It is true that suddenly fights started. It is true that while this fight was going on, three persons came there in rickshaw. It is true that two persons who came there had chopper and knife in their hands. It is true that these three persons started assaulting me, Anwar, Firoz and Sharan with those weapons."

. Mr.Mohite has submitted that the evidence of this witness in his cross-examination shows that it was not the present applicant, but, some other unknown persons, who had assaulted the deceased.

7. After going through the evidence on record, we find much merit in the submission made by Mr.Mohite learned Advocate for the applicant. Hence we are inclined to grant bail. Hence the order :

ORDER

I. The applicant be released on bail in the sum of Rs.15,000/- (Rs.Fifteen Thousand Only) with one or two sureties to make-up the said amount.

II. The applicant shall report Lonavla Police Station, once in a month, till disposal of Appeal.

8. Application is disposed of.

..(5)..

(D.G.DESHPANDE, J.)

(SMT.V.K.TAHILRAMANI, J.)